

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GRACE M. SANCHEZ,

Plaintiff,

v.

CAROLYN W. COLVIN,
Acting Commissioner of Social Security,

Defendant.

Case No. CV 12-04308-JEM

MEMORANDUM OPINION AND ORDER
AFFIRMING DECISION OF THE
COMMISSIONER OF SOCIAL SECURITY

PROCEEDINGS

On May 24, 2012, Grace M. Sanchez ("Plaintiff" or "Claimant") filed a complaint seeking review of the decision by the Commissioner of Social Security ("Commissioner") denying Plaintiff's application for Supplemental Security Income benefits. The Commissioner filed an Answer on September 10, 2012. On February 19, 2013, the parties filed a Joint Stipulation ("JS"). The matter is now ready for decision.

Pursuant to 28 U.S.C. § 636(c), both parties consented to proceed before this Magistrate Judge. After reviewing the pleadings, transcripts, and administrative record ("AR"), the Court concludes that the Commissioner's decision must be affirmed and this case dismissed with prejudice.

BACKGROUND

Plaintiff is a 53 year old female who applied for Supplemental Security Income benefits on August 26, 2009. (AR 24.) The ALJ determined that Plaintiff has not engaged in substantial gainful activity since the application date. (AR 26.)

Plaintiff's claim was denied initially on December 23, 2009. (AR 24.) Plaintiff filed a timely request for hearing, which was held before Administrative Law Judge ("ALJ") Joel B. Martinez on November 23, 2010, in Pasadena, California. (AR 24.) Claimant appeared and testified at the hearing and was represented by counsel. (AR 24.) Vocational expert ("VE") Gail Maron also appeared and testified at the hearing. (AR 24.)

The ALJ issued an unfavorable decision on December 20, 2010. (AR 24-31.) The Appeals Council denied review on March 29, 2012. (AR 1-3.)

DISPUTED ISSUES

As reflected in the Joint Stipulation, Plaintiff raises the following disputed issues as grounds for reversal and remand:

1. Whether the ALJ correctly considered the opinions of the treating physicians.
2. Whether the ALJ provided clear and convincing reasons for rejecting Grace Sanchez's subjective testimony.

STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), this Court reviews the ALJ's decision to determine whether the ALJ's findings are supported by substantial evidence and free of legal error. Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996); see also DeLorme v. Sullivan, 924 F.2d 841, 846 (9th Cir. 1991) (ALJ's disability determination must be supported by substantial evidence and based on the proper legal standards).

Substantial evidence means "'more than a mere scintilla,' but less than a preponderance." Saelee v. Chater, 94 F.3d 520, 521-22 (9th Cir. 1996) (quoting Richardson v. Perales, 402 U.S. 389, 401 (1971)). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson, 402 U.S. at 401 (internal quotation marks and citation omitted).

1 This Court must review the record as a whole and consider adverse as well as
 2 supporting evidence. Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006). Where
 3 evidence is susceptible to more than one rational interpretation, the ALJ's decision must be
 4 upheld. Morgan v. Comm'r of the Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir. 1999).
 5 "However, a reviewing court must consider the entire record as a whole and may not affirm
 6 simply by isolating a 'specific quantum of supporting evidence.'" Robbins, 466 F.3d at 882
 7 (quoting Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989)); see also Orn v. Astrue, 495
 8 F.3d 625, 630 (9th Cir. 2007).

9 THE SEQUENTIAL EVALUATION

10 The Social Security Act defines disability as the "inability to engage in any substantial
 11 gainful activity by reason of any medically determinable physical or mental impairment which
 12 can be expected to result in death or . . . can be expected to last for a continuous period of not
 13 less than 12 months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Commissioner has
 14 established a five-step sequential process to determine whether a claimant is disabled. 20
 15 C.F.R. §§ 404.1520, 416.920.

16 The first step is to determine whether the claimant is presently engaging in substantial
 17 gainful activity. Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). If the claimant is engaging
 18 in substantial gainful activity, disability benefits will be denied. Bowen v. Yuckert, 482 U.S. 137,
 19 140 (1987). Second, the ALJ must determine whether the claimant has a severe impairment or
 20 combination of impairments. Parra, 481 F.3d at 746. An impairment is not severe if it does not
 21 significantly limit the claimant's ability to work. Smolen v. Chater, 80 F.3d 1273, 1290 (9th Cir.
 22 1996). Third, the ALJ must determine whether the impairment is listed, or equivalent to an
 23 impairment listed, in 20 C.F.R. Pt. 404, Subpt. P, Appendix I of the regulations. Parra, 481 F.3d
 24 at 746. If the impairment meets or equals one of the listed impairments, the claimant is
 25 presumptively disabled. Bowen v. Yuckert, 482 U.S. at 141. Fourth, the ALJ must determine
 26 whether the impairment prevents the claimant from doing past relevant work. Pinto v.
 27 Massanari, 249 F.3d 840, 844-45 (9th Cir. 2001).

1 Before making the step four determination, the ALJ first must determine the claimant's
 2 residual functional capacity ("RFC"). 20 C.F.R. § 416.920(e). Residual functional capacity
 3 ("RFC") is "the most [one] can still do despite [his or her] limitations" and represents an
 4 assessment "based on all the relevant evidence." 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1).
 5 The RFC must consider all of the claimant's impairments, including those that are not severe.
 6 20 C.F.R. §§ 416.920(e), 416.945(a)(2); Social Security Ruling ("SSR") 96-8p.

7 If the claimant cannot perform his or her past relevant work or has no past relevant work,
 8 the ALJ proceeds to the fifth step and must determine whether the impairment prevents the
 9 claimant from performing any other substantial gainful activity. Moore v. Apfel, 216 F.3d 864,
 10 869 (9th Cir. 2000). The claimant bears the burden of proving steps one through four,
 11 consistent with the general rule that at all times the burden is on the claimant to establish his or
 12 her entitlement to benefits. Parra, 481 F.3d at 746. Once this prima facie case is established
 13 by the claimant, the burden shifts to the Commissioner to show that the claimant may perform
 14 other gainful activity. Lounsbury v. Barnhart, 468 F.3d 1111, 1114 (9th Cir. 2006). To support
 15 a finding that a claimant is not disabled at step five, the Commissioner must provide evidence
 16 demonstrating that other work exists in significant numbers in the national economy that the
 17 claimant can do, given his or her RFC, age, education, and work experience. 20 C.F.R.
 18 § 416.912(g). If the Commissioner cannot meet this burden, then the claimant is disabled and
 19 entitled to benefits. Id.

20 THE ALJ DECISION

21 In this case, the ALJ determined at step one of the sequential process that Plaintiff has
 22 not engaged in substantial gainful activity since August 26, 2009, the application date. (AR 26.)

23 At step two, the ALJ determined that Plaintiff has the following combination of medically
 24 determinable severe impairments: a 5 mm focal disc extrusion at L4-5, disc bulging at L3-4, and
 25 discogenic disease. (AR 26.)

26 At step three, the ALJ determined that Plaintiff does not have an impairment or
 27 combination of impairments that meets or medically equals one of the listed impairments. (AR
 28 26-27.)

1 The ALJ then found that Plaintiff has the RFC to perform light work with the following
2 limitations:

3 Claimant can perform postural activities occasionally, cannot climb
4 ladders, ropes or scaffolds, cannot work around heights and hazards, and
5 cannot be exposed to extreme temperatures.

6 (AR 27-30.) In determining this RFC, the ALJ made an adverse credibility determination. (AR
7 27.)

8 At step four, the ALJ found that Plaintiff has no past relevant work. (AR 30.) At step
9 five, however, the ALJ found that, considering the Claimant's age, education, lack of work
10 experience, and RFC, there are jobs that exist in significant numbers in the national economy
11 that Claimant can perform, including ticket taker, hand cloth folder, and cafeteria attendant.
12 (AR 30-31.)

13 Consequently, the ALJ found Claimant not disabled within the meaning of the Social
14 Security Act since August 26, 2009, the date the application was filed. (AR 31.)

15 DISCUSSION

16 The ALJ decision must be affirmed. The ALJ properly rejected the opinion of Plaintiff's
17 treating physician. The ALJ also properly discounted Plaintiff's credibility.

18 The ALJ's RFC is supported by substantial evidence. The ALJ's non-disability
19 determination is supported by substantial evidence and free of legal error.

20 I. THE ALJ PROPERLY REJECTED THE OPINION 21 OF PLAINTIFF'S TREATING PHYSICIAN

22 Plaintiff contends that the ALJ improperly rejected the opinion of Dr. Sarkisian, Plaintiff's
23 treating physician. The Court disagrees.

24 A. Relevant Federal Law

25 In evaluating medical opinions, the case law and regulations distinguish among the
26 opinions of three types of physicians: (1) those who treat the claimant (treating physicians); (2)
27 those who examine but do not treat the claimant (examining physicians); and (3) those who
28 neither examine nor treat the claimant (non-examining, or consulting, physicians). See 20

1 C.F.R. §§ 404.1527, 416.927; see also Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995). In
 2 general, an ALJ must accord special weight to a treating physician's opinion because a treating
 3 physician "is employed to cure and has a greater opportunity to know and observe the patient
 4 as an individual." Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989) (citation omitted). If
 5 a treating source's opinion on the issues of the nature and severity of a claimant's impairments
 6 is well-supported by medically acceptable clinical and laboratory diagnostic techniques, and is
 7 not inconsistent with other substantial evidence in the case record, the ALJ must give it
 8 "controlling weight." 20 C.F.R. §§ 404.1527(d)(2), 416.927(d)(2).

9 Where a treating doctor's opinion is not contradicted by another doctor, it may be
 10 rejected only for "clear and convincing" reasons. Lester, 81 F.3d at 830. However, if the
 11 treating physician's opinion is contradicted by another doctor, such as an examining physician,
 12 the ALJ may reject the treating physician's opinion by providing specific, legitimate reasons,
 13 supported by substantial evidence in the record. Lester, 81 F.3d at 830-31; see also Orn, 495
 14 F.3d at 632; Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002). Where a treating
 15 physician's opinion is contradicted by an examining professional's opinion, the Commissioner
 16 may resolve the conflict by relying on the examining physician's opinion if the examining
 17 physician's opinion is supported by different, independent clinical findings. See Andrews v.
 18 Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995); Orn, 495 F.3d at 632. Similarly, to reject an
 19 uncontradicted opinion of an examining physician, an ALJ must provide clear and convincing
 20 reasons. Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th Cir. 2005). If an examining physician's
 21 opinion is contradicted by another physician's opinion, an ALJ must provide specific and
 22 legitimate reasons to reject it. Id. However, "[t]he opinion of a non-examining physician cannot
 23 by itself constitute substantial evidence that justifies the rejection of the opinion of either an
 24 examining physician or a treating physician"; such an opinion may serve as substantial
 25 evidence only when it is consistent with and supported by other independent evidence in the
 26 record. Lester, 81 F.3d at 830-31; Morgan, 169 F.3d at 600.

1 **B. Analysis**

2 Plaintiff testified that she had neck disc and back problems (AR 27) and was determined
3 to have the medically determinable impairments of disc extrusion and bulging and discogenic
4 disease. (AR 26.) Plaintiff claims that she can walk but 30 minutes, stand but one hour, and sit
5 but 1.5 hours. (AR 27.) Her treating physician, Dr. Jack Sarkisian, opined that Claimant could
6 sit, stand and walk less than 2 hours a day due to low back pain, cervical radiculopathy, and
7 pain in the legs. (AR 28, 295.) Dr. Sarkisian's physical capacities assessment would have
8 resulted in a finding of disability under Rule 201.09 of the Medical-Vocational Guidelines,
9 according to Plaintiff. The ALJ, however, rejected Dr. Sarkisian's opinion for specific, legitimate
10 reasons.

11 First, the ALJ found that Dr. Sarkisian's opinion was not supported by the "minimal
12 objective findings" in the record. (AR 28.) An ALJ may reject a treating physician's opinion
13 whether or not it is contradicted. Magallanes, 881 F.2d at 751. As Claimant herself notes (JS
14 5), a recent MRI performed on April 10, 2010, revealed moderate discogenic disease. (AR 28,
15 322.) An MRI dated February 22, 2005, revealed moderate narrowing of the spinal canal and
16 dural sac without causing cord compression, moderately severe foraminal stenosis, and mild
17 disc bulging. (AR 281.) An MRI from March 21, 2002, revealed moderate spinal canal stenosis
18 and moderate neural foraminal narrowing. Claimant stresses the primacy of treating physician
19 opinions, but never explains how Dr. Sarkisian's limitations in excess of the ALJ's RFC are
20 justified in view of the MRI findings. Claimant cites Dr. Sarkisian's treatment notes that found
21 neuropathy (AR 301, 302, 321), but the notes are not supported by objective medical evidence
22 that would substantiate more restrictive limitations than the ALJ's RFC. (AR 28.) Claimant also
23 points to an MRI that revealed spondylosis (AR 294), but the radiologist noted no evidence of
24 compression, intervertebral spaces were not compromised and there were no abnormalities
25 demonstrated with the hands. (AR 294.) Further undermining Dr. Sarkisian's opinion is his
26 conservative treatment — Claimant never underwent surgery, had but one epidural injection
27 (AR 28), and was never referred to orthopedic specialists for further treatment and evaluation.
28

1 (AR 29.) Rollins v. Massanari, 261 F.3d 853, 856 (9th Cir. 2001) (opinion of treating physician
2 properly rejected because physician prescribed only conservative treatment).

3 Second, three physicians assessed Claimant with a light work RFC with limitations. Dr.
4 Neeraj Gupta, an internal medicine consulting examiner, examined Claimant in December
5 2009. (AR 28, 224-229.) Although Dr. Gupta found reduced range of motion in Claimant's
6 neck and back, she had negative straight leg raising, no tenderness in her back, good muscle
7 tone, full strength in all extremities, and walked with a normal gait. (AR 28, 227-229.) Claimant
8 was able to stand on her heels and toes, and perform tandem gait. (AR 28, 228.) She had no
9 trouble getting in and out of her chair. (AR 28, 226.) The ALJ interpreted Dr. Gupta's findings
10 as not showing "significant abnormalities." (AR 29.) Dr. Gupta's opinions and findings,
11 because they are based on his own independent examination, constitute substantial evidence.
12 Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001).

13 Dr. C. Friedman, a State agency reviewer, reviewed the medical evidence of record and
14 found that Plaintiff could perform light work with limitations. (AR 28, 236-240.) The ALJ
15 generally adopted Dr. Friedman's opinion because it is consistent with the record as a whole
16 and "correlates with the minimal objective findings." (AR 28.) Although he is a non-examining
17 physician, Dr. Friedman's opinion constitutes substantial evidence because it is consistent with
18 independent clinical findings and other evidence of record. Thomas, 278 F.3d at 957.

19 Claimant also was examined by Dr. Sanjay Sharma in July 2010. (AR 28, 312-315.) Dr.
20 Sharma noted that Claimant had no pain or swelling in the neck, no musculoskeletal swelling,
21 weakness, numbness, or muscle pain, and no pain with walking. (AR 28.) The ALJ found that
22 Dr. Sharma's examination shows "fairly normal findings and do not demonstrate any pathology
23 that would limit the claimant to less than 2 hours total of either sitting or standing." (AR 28-29.)

24 Plaintiff relies heavily on Dr. Sarkisian's treating physician status and disagrees with
25 Dr. Friedman's assessment of the medical evidence, which Plaintiff believes establishes more
26 restrictive limitations than the ALJ's RFC. Yet it is the ALJ who is responsible for resolving
27 conflicts in the medical evidence. Andrews, 53 F.3d at 1039; Magallanes, 881 F.2d at 750.

1 Here, the ALJ's interpretation was reasonable and should not be second-guessed. Rollins, 261
2 F.3d at 857.

3 Plaintiff also attacks Dr. Gupta's opinion because it was based on a one-time
4 examination and Dr. Gupta did not review the entirety of Claimant's medical records. This
5 criticism loses force in the face of three separate opinions from physicians who found no basis
6 for more restrictive limitations than the ALJ's RFC. Plaintiff never explains why Ms. Sanchez
7 did not exhibit the claimed more restrictive limitations on examination by Dr. Gupta and
8 Dr. Sharma. In fact, Plaintiff does not address or even mention Dr. Sharma's findings and
9 opinions. Plaintiff, moreover, is incorrect in stating that the ALJ "afforded no weight" to
10 Dr. Sarkisian's opinion. (JS 8.) The ALJ found Dr. Sarkisian's opinion merits "less weight" than
11 the opinions of Dr. Gupta, Dr. Friedman and Dr. Sharma. (AR 28-29.) As already stated, the
12 ALJ's interpretation of the medical evidence is reasonable and should not be second-guessed.
13 Rollins, 261 F.3d at 857.

14 Subsequent to the ALJ's opinion, Claimant submitted to the Appeals Council on May 23,
15 2011, a four page opinion from Dr. Hakop Mkhsyan. (AR 339-343.) Dr. Mkhsyan found that
16 Ms. Sanchez could walk no more than half a block and could never sit for more than fifteen
17 minutes at a time or stand for more than ten minutes at a time. (AR 341.) Dr. Mkhsyan's
18 opinion is not supported by any objective clinical findings or treatment notes. The Appeals
19 Council made the new medical evidence part of the record (AR 5), but after considering the new
20 evidence found that it did not provide a basis for changing the ALJ decision. (AR 1-2.) When
21 the Appeals Council denies review, the ALJ decision becomes the final decision of the
22 Commissioner subject to substantial evidence review. Taylor v. Comm'r of Soc. Sec. Adm.,
23 659 F.3d 1228, 1231 (9th Cir. 2011). Both Dr. Mkhsyan's opinion and Dr. Sarkisian's opinion
24 are not supported by the objective medical evidence, which is more consistent with the
25 opinions, findings and the light work RFC assessments of Dr. Gupta, Dr. Friedman and
26 Dr. Sharma. The ALJ's interpretation of the medical evidence is reasonable and should not be
27 second-guessed. Rollins, 261 F.3d at 857.

1 The ALJ properly rejected Dr. Sarkisian's opinion for specific, legitimate reasons
2 supported by substantial evidence.

3 **II. THE ALJ PROPERLY DISCOUNTED PLAINTIFF'S CREDIBILITY**

4 Plaintiff contends that the ALJ improperly discounted Plaintiff's credibility. The Court
5 disagrees.

6 **A. Relevant Federal Law**

7 The test for deciding whether to accept a claimant's subjective symptom testimony turns
8 on whether the claimant produces medical evidence of an impairment that reasonably could be
9 expected to produce the pain or other symptoms alleged. Bunnell v. Sullivan, 947 F.2d 341,
10 346 (9th Cir. 1991); see also Reddick, 157 F.3d at 722; Smolen v. Chater, 80 F.3d at 1281-82
11 esp. n.2. The Commissioner may not discredit a claimant's testimony on the severity of
12 symptoms merely because they are unsupported by objective medical evidence. Reddick, 157
13 F.3d at 722; Bunnell, 947 F.2d at 343, 345. If the ALJ finds the claimant's pain testimony not
14 credible, the ALJ "must specifically make findings which support this conclusion." Bunnell, 947
15 F.2d at 345. The ALJ must set forth "findings sufficiently specific to permit the court to conclude
16 that the ALJ did not arbitrarily discredit claimant's testimony." Thomas, 278 F.3d at 958; see
17 also Rollins, 261 F.3d at 856-57; Bunnell, 947 F.2d at 345-46. Unless there is evidence of
18 malingering, the ALJ can reject the claimant's testimony about the severity of a claimant's
19 symptoms only by offering "specific, clear and convincing reasons for doing so." Smolen, 80
20 F.3d at 1283-84; see also Reddick, 157 F.3d at 722. The ALJ must identify what testimony is
21 not credible and what evidence discredits the testimony. Reddick, 157 F.3d at 722; Smolen, 80
22 F.3d at 1284.

23 **B. Analysis**

24 In determining Plaintiff's RFC, the ALJ concluded that Plaintiff's medically determinable
25 impairments reasonably could be expected to cause her alleged symptoms. (AR 27.) The ALJ,
26 however, found that Plaintiff's statements regarding the intensity, persistence and limiting
27 effects of these symptoms were not entirely credible to the extent they are inconsistent with the
28 ALJ's RFC assessment. (AR 27.) Because the ALJ did not make a finding of malingering, he

1 was required to provide clear and convincing reasons supported by substantial evidence to
2 discount Plaintiff's credibility. Smolen, 80 F.3d at 1283-84. The ALJ did so.

3 First, the ALJ found that the objective medical evidence did not substantiate Claimant's
4 subjective symptom allegations. (AR 27, 29.) An ALJ is entitled to consider whether there is a
5 lack of medical evidence to corroborate a claimant's alleged pain symptoms so long it is not the
6 only reason for discounting a claimant's credibility. Burch v. Barnhart, 400 F.3d 676, 680-81
7 (9th Cir. 2005); Thomas, 278 F.3d at 959. Here the ALJ found that the medical evidence was
8 "sparse" and does not adequately support the Claimant's various allegations, including her
9 complaints of hand pain. (AR 29.) The Court already has concluded that the medical evidence
10 does not support greater limitations than those assessed in the ALJ's RFC. Thus, substantial
11 evidence supports the ALJ's finding that Plaintiff's claimed limitations are not supported by the
12 objective medical evidence.

13 Second, the ALJ found that Plaintiff's "history of conservative treatment with medications
14 and one injection is not consistent with her many pain complaints." (AR 29.) There was also no
15 evidence of referral to orthopedic specialists for further evaluation and treatment. (AR 29.)
16 Conservative treatment is a valid factor in assessing credibility. Tommasetti v. Astrue, 533 F.3d
17 1035, 1039-40 (9th Cir. 2008).

18 Third, the ALJ found that Plaintiff's alleged limitations were inconsistent with her daily
19 activities, a legitimate factor in assessing credibility. Bunnell, 947 F.2d at 345-46. Here,
20 Plaintiff acknowledged she could do light household chores without assistance. (AR 29, 190.)
21 Additionally, the father of Plaintiff's son reported that Plaintiff generally could do activities of
22 daily living and took good care of her children. (AR 29-30.) The ALJ found that Mr. Martinez's
23 statements do not support Claimant's allegations of disabling symptoms. (AR 30.) Plaintiff's
24 daily activities, even if they do not prove that she could return to work, do suggest that the
25 alleged severity of her limitations was exaggerated. See Valentine v. Astrue, 574 F.3d 685, 694
26 (9th Cir. 2009).

27 Although Plaintiff disputes these findings, it is the ALJ's responsibility to resolve
28 ambiguities in the record, Andrews, 53 F.3d at 1039, and where the ALJ's interpretation of the

1 evidence is reasonable as it is here, it should not be second-guessed. Rollins, 261 F.3d at 857.
2 The ALJ properly discounted Plaintiff's credibility for clear and convincing reasons supported by
3 substantia evidence.

4 * * *

5 The ALJ properly rejected the opinion of Plaintiff's treating physician and properly
6 discounted Plaintiff's credibility. The ALJ's RFC is supported by substantial evidence. The
7 ALJ's non-disability determination is supported by substantial evidence and free of legal error.

8 **ORDER**

9 IT IS HEREBY ORDERED that Judgment be entered affirming the decision of the
10 Commissioner of Social Security and dismissing this case with prejudice.

11
12 DATED: March 18, 2013

/s/ John E. McDermott
JOHN E. MCDERMOTT
UNITED STATES MAGISTRATE JUDGE